IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6124 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANBHAI DAHYABHAI PARMAR

Versus

DISTRICT SUPDT OF POLICE

Appearance:

MR YN OZA for Petitioner

MS ROHINI ACHARYA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/12/2000

ORAL JUDGEMENT

1. This is a petition under Article 226 of the Constitution. The petitioner has challenged the order dated 28/2/1989 [Annexure `A'] passed by the D.S.P., Western Railway, Baroda, dismissing the petitioner from service, and also the subsequent order dated 19/3/1990

[Annexure `B'] passed by the D.I.G., confirming the above order. The petitioner has prayed for reinstatement with full backwages.

2. The petitioner joined the services as an unarmed police constable in the year 1963. The petitioner was posted as a railway constable. The petitioner's wife was also a lady constable in the police department. On account of frequent transfers, the petitioner had made a grievance against such transfers. It appears that the petitioner had also made grievance about delay in release of the increments in his wife's salary. The petitioner was making representations and ultimately, when he found that his grievances were not being redressed, he sent a notice that he will go on hunger strike to death. The petitioner started his hunger strike in front of the western railway police, Vadodara on 26/1/1985. The petitioner called off his strike on 1/4/1985 as his son was sick. During this period, majority of the petitioner's grievances were redressed.

2.1 However, in the meantime, on 5/2/1985, the petitioner was placed under suspension and he was prosecuted for offence u/s 309 of IPC, but was acquitted by the learned Magistrate. The suspension order was revoked on 16/8/1986. The petitioner was served with the chargesheet on 23/9/1986 alleging that the petitioner had committed serious misconduct by threatening to go on hunger strike and by going on such strike. During the departmental inquiry, the petitioner was served with the second show cause notice dated 1/2/1989 calling upon the petitioner to show cause why he should not be dismissed from service. Ultimately, the impugned order dated 28/2/1989 came to be passed, dismissing the petitioner from service. The petitioner's appeal was also dismissed by the D.I.G. on 19/3/1990. Hence, the petitioner approached this Court.

3. At the hearing of this petition, the learned counsel for the petitioner submits that since the petitioner was acquitted by the Criminal Court, the respondent ought not to have held any departmental inquiry. In any case, there is no misconduct, if at all, in going on hunger strike. Otherwise also, the penalty of dismissal imposed upon the petitioner was too harsh and disproportionate, considering the fact that the petitioner had already put in 25 years of service and the petitioner would be losing his retirement benefits. Strong reliance has been placed by Mr. Oza on the decision in Chandresh Pande v/s Union of India, 1985 LAB. I.C. 1490, taking the view that the conduct of an

employee going on hunger strike was not unbecoming of a government servant.

4. On the other hand, Ms. Rohini Acharya, learned AGP has opposed the petition and submitted that the petitioner being a member of a disciplined force like the police force, cannot be permitted to defy the authority merely because in his perception his grievances were not redressed. It is always for the authority to decide whether there is any substance in the grievance or not and to grant the relief if there is substance in any of the grievances, but an employee in government service, much less a constable in the police force, cannot be permitted to decide for himself the justification of taking extreme step and going on hunger strike. It is submitted that even if there was any substance in the grievances of an employee, he has no right to go on hunger strike which would amount to an act of indiscipline and, therefore, certainly misconduct. It is further submitted that the criminal case was in respect of offence u/s 309 IPC, whereas the departmental inquiry in question was in respect of an act of indiscipline on part of the constable in the police force.

5. Having heard the learned counsel for the parties, it appears to the Court that there is substance in the argument of Ms. Rohini Acharya, learned AGP that the employee threatening to go on hunger strike and also going on hunger strike commits an act of indiscipline which would constitute misconduct. Whenever an employee has any grievance against his superior authorities, he has a right to make a representation and to make an attempt to persuade the authorities to accept his point of view. If he fails to get any redressal at the departmental level, he also has the liberty to approach a court of law. But a member of the disciplined force like a police constable is not supposed to go on hunger strike. The learned AGP is also right in contending that the misconduct for which the departmental inquiry was held was in relation to an act of indiscipline which was not the charge in the criminal prosecution launched u/s 309 IPC. The disciplinary inquiry in respect of the charge of an act of indiscipline cannot be thwarted by conclusion of a criminal case u/s 309 IPC. In view of the above, the contention of Mr. Oza that there was no misconduct cannot be accepted. The reliance placed on the decision of M.P. High Court in case of Chandresh Pande [supra], is misconceived. It was a case where employees of railway department had gone on strike. The present case cannot therefore be said to be comparable with that case. Here, the petitioner was a police

constable, a member of the disciplined force, and therefore, his case stands on a different footing altogether.

6. The petitioner's next contention is that the penalty of dismissal for going on hunger strike after putting in 25 years of service was too harsh and disproportionate. It is true that this Court is not to sit in appeal over the decision of the disciplinary authority. However, considering the fact that the petitioner is out of service since 28/2/1989 and this Court does not propose to award any backwages for the intervening period, the Court proposes to quash and set aside the order of dismissal, as confirmed by the D.I.G. Ordinarily, the Court would have remanded the matter to the disciplinary authority for considering the question of punishment afresh, but in view of the lapse of 11 years from the date of dismissal and 10 years since the date of filing the petition, and in view of the fact that the petitioner is being denied backwages for a period as long as 11 years and considering the fact that the petitioner is on the verge of retirement, it will be just and proper to allow the petition partly with a direction to the respondent to reinstate the petitioner in service with continuity of service, but without backwages.

7. In view of above, the petition is partly allowed. Impugned order dated 28/2/1989 [Annexure `A'] of D.S.P., Western Railway, Baroda and the Order dated 19/3/1990 [Annexure `B'] of D.I.G. are quashed and set aside. The respondents are directed to reinstate the petitioner in service with continuity of service, but without any backwages. This direction shall be complied with within one month from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier.

Rule is made absolute to the aforesaid extent with no orders as to costs.

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